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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 577

FRANCES D. PEARMAN, PETITIONER

v.

ANTHONY J. CELEBREZZE, SECRETARY OF HEALTH, EDUCATION AND WELFARE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

The petition in this case raises the single question whether there was substantial evidence in the administrative record to support the determination of the Secretary of Health, Education and Welfare that petitioner was not under a disability within the meaning of Sections 216(i)(1) and 223(c) of the Social Security Act, as amended, 42 U.S.C. 416(i) and 423 (c), and therefore was not eligible for disability benefits under the Act. On the basis of their examination of the record, both courts below concluded that the administrative finding was amply supported. This conclusion is clearly warranted and there is

no question of general importance calling for further review by this Court.

Section 216(i)(1), which deals with the establishment of a period of disability, defines disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration." Section 223(c), which determines entitlement to disability insurance benefit payments, contains a like definition. Both sections place the burden of proof upon the claimant.[1]

In this case, petitioner established that, at the time of the filing of her applications for benefits,[2] she had

[1] For those who qualify under its provisions, Section 216 of the Act (42 U.S.C. 416) provides a period when neither the time elapsed nor the age record of the disabled applicant will be taken into account in determining insured status at the age of 65 under 42 U.S.C. 414, or in computing the amount of benefits payable under 42 U.S.C. 415. Similarly, for those who qualify, Section 223 (42 U.S.C. 423) provides for disability insurance benefits. An applicant, like petitioner here, must prove "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration." 42 U.S.C. 416(i)(1) and 423(c)(2).

[2] Petitioner filed her first application in 1957, seeking only a period of disability under Section 216(i) of the Act, 42 U.S.C. 416(i) (Tr. 60–63). This was denied and petitioner did not seek a hearing (Tr. 70). About two and a half years later, on October 25, 1960, petitioner filed a second application with the Bureau, seeking both a period of disability under Section 216(i) of the Act and disability insurance benefits under Section 223, 42 U.S.C. 416(i) and 423 (Tr. 71–74).

"Tr." references are to the administrative transcript, which is part of the record before this Court.

certain impairments resulting from an automobile accident in 1952: immobility or ankylosis of the right knee, ankylosis of the right elbow; and an inability to make a complete fist with her right hand (Pet. App. 14).[3] Impairments of this nature do not, however, invariably cause inability to engage in substantial gainful employment; they may or may not, depending upon all of the individual circumstances.

The administrative determination was necessarily based upon an evaluation of all of the evidence bearing upon petitioner's impairments and capabilities. This evidence showed that, by her own admission, petitioner has been able to engage in a not inconsiderable degree of activity, notwithstanding her stiff knee and elbow and impaired hand. She is able to get around without help, to do most of her housework and to drive an automobile equipped with automatic transmission (Tr. 34–38, 61, 64–65). She has learned to do many things with her left hand and can write with her right hand when using a pen (Tr. 56–57, 64).

The evidence further disclosed that petitioner's age, education and work experience were also fully consistent with the performance of light work. Petitioner was thirty-seven years old at the time of the filing of her first application (Tr. 60). She is a high school graduate and is reported to be very intelligent

[3] "Pet. App." references are to the petition for a writ of certiorari.

and personable (Tr. 62, 65). Her work experience is varied and she has the apparent ability to learn new jobs (Tr. 38–42, 64–65). Her own description of her last position—working with samples in a rayon plant—indicated that she was not merely performing simple manual duties but was called upon to assume a significant degree of responsibility (Tr. 41–42).

The South Carolina State Agency of Vocational Rehabilitation, to whom petitioner's 1960 application was referred under Section 221 of the Act, 42 U.S.C. 421, for a recommendation on the question of disability, concluded that petitioner's abilities are such that she ought to be able to return to the same type of work (Tr. 87–89). Her employer wrote to her, following her accident in 1952, stating that the company desired her to return (Tr. 42). Nevertheless, since the accident, petitioner has not sought to obtain work or to ascertain what she might be able to do (Tr. 36, 43, 52). As the Court of Appeals pointed out, this consideration was properly taken into account by the Secretary (Pet. App. 15). See, also, *Adams* v. *Flemming*, 276 F. 2d 901, 904 (C.A. 2); *Grindstaff* v. *Flemming*, 188 F. Supp. 44 (W.D. N.C.); *Sampson* v. *Flemming*, 189 F. Supp. 725 (D. Kan.); *Warcheim* v. *Ribicoff*, 194 F. Supp. 533 (D. Md.); *Druminski* v. *Ribicoff*, 194 F. Supp. 798 (D. Alaska); *Brady* v. *Ribicoff*, 195 F. Supp. 35 (D. Md.).

In sum, on the administrative record as a whole, the Secretary was fully justified in concluding that petitioner's impairments did not preclude her from engaging in any substantial gainful employment. We accordingly believe that there is no occasion for

further review, see *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 490–491. The petition should be denied.

Respectfully submitted.

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